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October 25, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

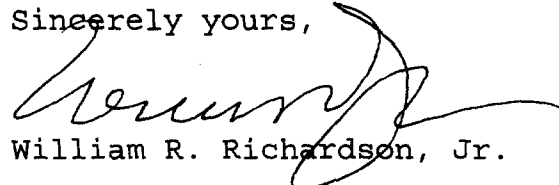
Re: CS Docket No. 96-60
Ex Parte Presentation

Dear Mr. Caton:

On behalf of ValueVision International, Inc. ("ValueVision"), and pursuant to Section 1.1206 of the Commission's rules, this notice is filed in duplicate to notify the Commission that on October 24, 1996, representatives of ValueVision met with Suzanne Toller to discuss the matters raised in the attached materials. Tapes of the programs described in these materials were also provided.

If there are any questions concerning the above-referenced matter, please communicate with the undersigned.

Sincerely yours,



William R. Richardson, Jr.

cc: Suzanne Toller

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WHY IMPLICIT FEE PROPOSALS ARE FATALY FLAWED

1. Implicit fee calculations cannot be imported from the premium channel to the tier context, because they cannot accurately measure the value to a subscriber of any particular channel on that tier.

a. The original Besen implicit fee proposal was not applied to tiers.

b. The Commission advanced no basis for its 1993 view that "where necessary to determine the value to a subscriber of a single channel on a tier, the rate calculation . . . contemplates dividing the cost of the total tier by the number of channels located on that tier." 8 FCC Rcd at 5950-51 n.1312.

c. This approach assumes that each channel has the same value to a subscriber, even though Lifetime has a 1.4 rating and E! has a 0.3 rating. Multichannel News, July 1, 1996, at 8. And it forces the leased access programmer to pay the average even though (as with must carry) the operator is obviously going to replace underperformers rather than average performers.

2. To add insult to injury, the operator recovers not only this inflated measure of the value of the channel bumped, but all of the subscriber revenues attributable to carriage of the channel. This double income stream is in sharp contrast to OVS, where the program packager can put together its own tier and collect the revenues for that leased tier directly from subscribers.

3. NCTA claims that the implicit fee is a "surrogate" for the completely unproven possibility that replacing low rated cable channels with new leased access programmers will result in lost subscribers.

a. While this possibility is highly remote, the implicit fee is in any event a measure with absolutely no logical connection to the anticipated size of any such subscriber loss.

b. In fact, if the average implicit fee works out to a 35-40 cents per sub per month rate, and the cost/market formula works out to 5-10 cents, then the 30 cents differential works out to an assumption of a 5% drop in subscribers for each leased channel substituted on a CPST tier (assuming \$14 CPST price and 40% EBITDA margin). Given the very low ratings of the least popular cable channels, this is preposterous.

c. Indeed, the Commission's own "going forward" regime indicates that newly added channels are valued by subscribers at no more than 20 cents each (plus programming costs, which would be netted out in an implicit fee calculation).

4. The only real loss for which NCTA seeks recovery is not an economic loss at all. It is a 10-15% loss of the operator's "right to freely program [a] channel."^{1/} Congress, however, instead applied common carrier principles to the leased access set aside. And as the Fox-TCI-Lifetime dispute shows, it is by no means obvious that the exercise of that right by a monopolist maximizes consumer welfare.

^{1/} Ex Parte Presentation of NCTA (Sept. 17, 1996); Comments of NCTA at 19 ("taking away an operator's ability to program a channel").

WHY LOST SUBSCRIBER REVENUE IS A MYTH

1. As a threshold matter, the only reliable record evidence on this point is ValueVision's October 2 letter providing anecdotal evidence that such loss appears to be nil.

2. The cable industry knows the answer and has provided virtually no evidence on this point, apart from push-pull "surveys" that lack any credibility. In OVS, the burden shifts to the operator in the absence of proof that the channels are being leased. Here, however, NCTA says only that lost subscriber revenue is "difficult to quantify" (Comments at 14) and therefore the Commission must presume it without proof.

3. True, operators provide evidence that some channels would have a negative opportunity cost under the Commission's formula. But the opportunity cost is not calculated by reference to channels (such as ESPN) that will remain on the system. And in any event, the existence of a negative opportunity cost does not demonstrate that such channels are being carried for their popularity, much less that subscribers would terminate if these channels were replaced with others.

a. Many of these are vertically integrated programmers. NCTA's comments concede that over 2/3 of the top 25 cable networks (in terms of carriage) are vertically integrated. Cable channels are carried largely because of strategic relationships between operator and programmer -- and dropped because of the absence of such relationships (e.g., MEU).

b. Carrying these channels now enables operators to increase rates -- by at least 20 cents plus programming costs.

c. Negative rates for leased access would never materialize. They would quickly generate an auction market.

HOW TO MAKE SENSE OUT OF THE LEGISLATIVE HISTORY

1. The 1984 Act did not regulate leased access rates. But it did intend that operators provide rates designed "to encourage, and not discourage, use of [leased access] channels." H.R. Rep. No. 934, 98th Cong., 2d Sess. 51 (1984).

2. In requiring leased access, the 1984 Act did provide that rates should be sufficient not to adversely affect "the operation, financial condition, or market development of the cable system." But that proviso was to be read "consistent with the purpose" of leased access. 47 U.S.C. § 532(c). And it certainly did not mean that Congress intended for the cable industry to increase its 1984 profitability while preventing leased access, and then later claim that it had a statutory entitlement to continue such monopoly rents.

3. The whole premise of the 1992 Act was that cable operators had obtained monopoly status and earned monopoly profits that required reregulation. As Congress noted, monthly subscriber revenue increased from \$18.94 in 1984 to \$31.51 in 1991 and annual cable advertising revenues increased five-fold. H.R. Rep. No. 628, 102d Cong., 2d Sess. 29 (1992). Cable industry cash flow increased from \$4.8 billion in 1987 to \$9.7 billion in 1992. 9 FCC Rcd at 7570; 11 FCC Rcd at 2163.

4. Thus, the 1992 Congress hardly was intending to preserve monopoly rents. In fact, the intent of the 1992 revisions to the 1984 Act on leased access was to direct the Commission to change the rates for leased access so as to make it a genuine outlet. And "the principal reason" for its not being one was the power of cable operators "to establish the price and conditions for use." H.R. Rep. 628 at 39.

5. In 1992, Congress amended the "adversely affect" proviso to add that rates must also be consistent "with rules prescribed by the Commission." And "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." Stone v. INS, 115 S. Ct. 1537, 1545 (1995).

6. The 1996 Act legislative history reflects that Congress rejected attempts to eliminate leased access obligations. See Reply Comments of ValueVision at 6, citing H.R. Rep. No. 204, Part I, 104th Cong., 1st Sess. 115-16 (1995)(proposing to add §§ 653(b)(2) & (d)).

ONCE UPON A TREE™

ONCE UPON A TREE is a magical children's television program that combines rollicking fun, humor, music and fantasy with just enough reality to prove without a doubt that nothing is more awesome than the natural world around us. Who better to introduce children to this fascinating world than the creatures and trees who call it home! In short, **ONCE UPON A TREE** is about a group of make-believe animals and humans who learn how to get along with each other and handle conflicts by taking their cues from real plants and animals.

Imagine a forest of dreams where the trees and the animals come to life with such a gusto that children get caught up in the magic and become part of the family. Picture a sparkling forest pond that becomes a window on the world to illustrate fact is always stranger and more extraordinary than fiction. Throw in an eccentric world explorer with a penchant for dropping in with all sorts of real animals in tow and a colorful young woman who creates her own artistic magic with the materials of the forest, and you have the makings of an endearing and hilarious children's television program.

Our show revolves around **OAKLEY**, an engaging and slightly irreverent old tree who knows better than anyone the ways of the world because his roots go so deep and he's been everywhere and back again. As leader of the forest, Oakley often takes on different personas. He is one moment the leader of the band, the next, a football coach giving the half-time pep talk, and the next, Maurice Chevalier counseling a young beaver on love.

Flying high above the trees is Oakley's oldest friend, our slightly daffy, aristocratic owl, **MRS. PEEPERS**. She is our "Grandma with an attitude."

Oakley and Mrs. Peepers spend much of their time looking after **AMBER**, an orphaned bear cub who, like our youngest viewers, is full of energy and questions.

BILLY BOB, the bobcat, is our resident poet and wise guy. He is long on advice and short on patience and good manners. As Mrs. Peepers puts it, "He's going through a phase, a long phase."

Teasing Billy Bob every chance he gets and generally getting into mischief is **JASPER**, the hare. **JASPER** goes after life in such high gear that he invariably gets himself and the others in heaps of trouble.

FORREST STUMP, our soft spoken and painfully shy beaver, would, nonetheless, just as soon chop down a tree as look at it. It's a habit that gets on everyone's nerves but Oakley and our forest friends put up with him because underneath his workaholic exterior, **FORREST** has a heart of gold.

While all of our puppet forest friends set their own humorous tone, none can match the frivolity and talents of the wildest musical group to hit the scene since birds learned to sing. **CHICO**, the cricket, and **LA RANA**, the tree frog, met on a banana boat coming up from South America and they've been searching for fame and fortune ever since. **CHICO** and **LA RANA** serve as our "Greek chorus" as they sit on the sidelines commenting on life in the forest through comedy and a wide range of song.

Our forest friends know a kindred spirit when they see one and welcome two humans into the fold. **ROBIN**, a young woman who met Oakley when she was a child, is an aspiring artist who draws her inspiration from the forest. She is the forest's link to the human world. The animals care deeply for her and enjoy her colorful but perceptive ways.

And who could resist our renowned explorer and big time eccentric, **DR. DEX THUNDER**! **DR. DEX** drops in from time to time with an unusual story or worldly perspective gained from his experiences of working with animals all around the globe. **DR. DEX** also often brings an animal with him that further moves our story line along.

Every episode of **ONCE UPON A TREE** features a problem or conflict involving our forest friends. During each episode, the animals or Oakley call on the magic pond where short video segments of real life nature provide insight into whatever is vexing them. Naturally, Dr. Dex Thunder drops by with a real animal that provides some clues to their dilemma. And Robin spins her own magic from the materials she finds in the forest. Throw in Chico and La Rana and their unique perspective, and you have a world where real life challenges are resolved when everyone looks to nature and works together.

Our viewers come away with a greater appreciation and respect for the spectacular world around them. They also learn how to meet their own challenges and get along with others. And with Robin as their guide, they are able to create their own artistic masterpieces by gathering a few simple materials in their own backyard or park.

ONCE UPON A TREE is rich in humor, music, great characters and the belief that nothing science fiction can create compares to the unique world around us. It is a place kids will find irresistible.

The multi-layered humor and wide range of music are at the root of this show's appeal. Taking its cues from the comedy and song of the old "Muppet Show," versatile characters like the Genie in "Aladdin" and the slap stick fun of the old TV show, "I Love Lucy," **ONCE UPON A TREE** will become a classic kids of all ages will flock to.

Better yet, **ONCE UPON A TREE** will be so much fun to watch, kids will never suspect it's good for them. But their parents will know the truth and find great relief in a television show that entertains while it inspires only good things in their kids!

TREMENDOUS PRODUCTIONS, INC.

In 1994, Tremendous Productions, Inc. was formed to produce a quality children's television program that would delight children with its humor, music and engaging characters, reassure parents with its substance and please advertisers with its audience.

Our goal was to create a program that children, ages 2 to 11, would enjoy watching without compromising the integrity of the different age groups. We discovered that, all too often, programs that appeal to very young audiences are either ridiculed by older kids as too juvenile or avoided by parents as too obnoxious. At the same time, many programs geared to older kids are being watched by little ones who aren't mature enough to handle them. We wanted to create a program the whole family would enjoy watching.

To that end, Tremendous Productions, Inc. combines the unique talents and experiences of two special women.

Colleen Needles Chief Executive Officer and President

Colleen Needles brings more than fourteen years of television experience to the production company. As principal anchor of the highest rated CBS affiliate newscast in the country, Colleen has her pulse on the community and knows that people want more from television programming particularly when it comes to children's programming.

With four Emmy Award's to her credit on series and documentaries she produced on issues relating to the environment and children, Colleen also knows what most intrigues kids. She is committed to the notion that our two most valuable resources, our children and our environment, make natural partners.

As a board member of both the Children's Health Care Foundation and the Minneapolis Crisis Nursery, Colleen knows just how vulnerable our children are and how important it is to put their needs first.

With a Master's Degree in Broadcast Journalism from the Medill School of Journalism at Northwestern University and a B.B.A. in Economics and Business Economics from the University of Iowa, Colleen brings valuable business skills to the company as well.

With all that said, Colleen's greatest assets come in the form of three very special children, Tommy, Jack and Annie, who truly are the inspiration for setting a new standard for children's television.

Robin Blair
Chief Creative Officer and Vice President

Robin Blair brings a great variety of talents to Tremendous Productions, Inc. Robin will be responsible for the overall creative content of ONCE UPON A TREE. She will be working closely with the script writers, music arrangers, directors, producers and actors. Robin will be lending her talents as a songwriter to the original music composed for the program.

As an actress, Robin will play the human in the forest who interacts with the puppets and is involved in their everyday lives and challenges. When the program is on hiatus from taping, Robin will develop and appear in the ONCE UPON A TREE live program that will include promotional appearances and a full stage production with cast members.

Robin's entire professional career has been spent in the entertainment world. As a performer, she has appeared in the theater, on television, in the recording studio and on the radio. She has written jingles, songs, stories, copy, advertising campaigns and children's programming. She has produced all of the above, including her four musical children's albums for her own record company, Unicorn Records, Inc.

From 1990-1994, Robin served as Director of Development for the pioneering national children's radio network, known as Radio AAHS. She produced, wrote and hosted the mid-morning program, "Alphabet Soup", earning her multiple awards for its content and creativity, but she also prizes the fact that children all over the country came to think of Robin as a friend they could trust. "Alphabet Soup" was the most popular program on the airwaves for the network during the years Robin hosted it. As a result of commitment to children through the world of entertainment, Governor Arne Carlson from Minnesota, named Robin as the "1994 Woman of the Year." Robin now puts her entire creative energy and vision into Tremendous Productions, Inc.

Though Robin has a special relationship with children everywhere, her two favorites would be planted in the Twin Cities, Emily and Courtney who are the only kids who call Robin, 'Mom'.

THE TEAM

THE SHOW

In the world of children's television and video, few directors have more experience and respect than Emmy award winning **Ted May**. After eighteen years he continues to keep Children's Television Workshop's **Sesame Street** vital and number one with kids through his creative direction. Ted joins our production team with enthusiasm and vision.

Ted is joined by another Emmy-Award winning children's television professional, **Barry Harman**. Barry will serve as head writer and oversee the other writers on the project. Barry has worked in children's educational television for years. He completed five seasons for the Peabody Award-winning show, **The Great Space Coaster**. Barry will insure the quality of **ONCE UPON A TREE** with an eye to its educational mission, age-appropriateness and entertainment values.

Barry will work closely with **Tom Sherohman** who has recently completed two feature film scripts for Walt Disney and has transplanted himself from years of living in Los Angeles, to the Twin Cities. Mr. Sherohman has a multitude of television, feature film and theatrical experience to draw upon as he creates our characters' challenges, and we are thrilled to have his special magical spin within our program.

Our cast includes children's entertainer **Robin Blair**. Robin has enjoyed national recognition for her pioneering work as writer, producer and star with the first children's radio network in the country. As a songwriter, with four children's albums to her credit, Robin will not only compose most of the songs our characters will be singing, she will also perform **ONCE UPON A TREE LIVE!** when the television show is on hiatus from production.

THE SET

World renowned set designer Jack Barkla brings a lifetime of creating magic to **ONCE UPON A TREE**. With nine years as the artist director at the Guthrie Theater and nine more at the equally impressive Children's Theater of Minneapolis, Jack is particularly suited to create our forest of dreams. He has a special talent for dazzling children as his twenty years of creating Dayton's Christmas Auditorium shows and the Hollidazzle Parade will attest.

THE PUPPETS

ONCE UPON A TREE demands a lot of its puppet characters who must be realistic yet engaging and capable of moves not normally associated with puppets. Who best to create our forest friends than the designers who wrote the book on puppets, the people who trained under Jim Henson! Minneapolis based Vee Corporation, creator of Sesame Street Live and Sesame Street theme parks around the world, is breaking new ground in creating our realistic animal friends.

Sesame Street veteran performer Marty Robinson serves as puppet consultant for **ONCE UPON A TREE**. Muppet movie veteran Jim Martin will coordinate a colorful cast of puppet performers, all of whom bring a wealth of experience in the best puppet television and film production.

THE PRODUCTION

Even with the Twin Cities' growing predominance in film and television production, it is difficult to find a studio that can devote the time and resources to a show that is in production year round. We are fortunate to have formed a partnership with Value Vision International, Inc., the nation's third largest home shopping network and home of one of the area's most high tech production facilities. Value Vision International will provide Tremendous Production, Inc. with office and production facilities unmatched in the Midwest. Value Vision stands behind Tremendous Productions in its commitment to quality, educational children's programming. Thanks to Value Vision's expertise and experience, Tremendous Productions is able to create programming that has the utmost production values as well as an unparalleled educational mission.

THE MUSIC

Emmy award winning music composer, director and conductor Jack Allocco will oversee the music direction of our program. He has spent a decade in TV, ranging from the popular country program, "Hee Haw", to the daily CBS daytime soap operas, "The Young and The Restless" and "Bold and the Beautiful". His film composition credits, "The Firm" and "Finders Keepers", and his theater credits for conducting include national tours of, "On a Clear Day" and "Kiss Me Kate" provide for a wide-ranging musical experience that we are fortunate to have on board. Mr. Allocco has guest conducted illustrious orchestral settings as well, Denver Pops, Houston Pops, Toledo Symphony and London Symphony orchestras. He has also produced many album projects, including children's music.

THE INTEGRITY

Even with the best sets, puppets and production facilities, a show must deliver on its promises which is in our case an entertaining, informative program appropriate for its young audience. To insure our success, we have formed alliances with four very special organizations that bring their own unique assets to the project.

The Institute of Child Development, Center for Early Education and the Children, Youth and Family Consortium at the University of Minnesota are conducting secondary research on our program concept. They have also agreed to review our scripts to make sure they are age appropriate. And finally, they plan to conduct focus group testing to help us refine our product to reach the greatest number of children.

The Minnesota Zoo has agreed to give us unprecedented access to their facilities both in Minnesota and around the world for purposes of gathering video for our program. They have also agreed to provide us with the live, exotic creatures that will appear on the program with Dr. Dex. They, too, will review scripts insuring scientific accuracy.

The Minnesota Department of Natural Resources will also lend their wildlife expertise to the project. They, too, will offer us video opportunities as well as generate script ideas. Perhaps their most exciting contribution is the opportunity to tap into the nationwide network of children they have formed with their counterparts in the other 49 states.

Finally, last but not least, we are happy to preliminarily welcome The Nature Conservancy to **ONCE UPON A TREE**. This world renowned environmental group would offer us international credibility as well as a video library to draw from not to mention its vast network of families committed to environmental causes.